

NSC Referral Not Required
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Approved For Release 2003/08/08 : CIA-RDP84-00780R004300060051-5
1 April 71

1. Mr. W. -

OS has forwarded official
DD/S file cys of the paper which
you signed for Mr. the
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STAT

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to anyone on the Staff?

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Deputy Director of Security
4E-60 Hqs.

EXTENSION

NO.

DATE

TO: (Officer designation, room number, and building)

DATE

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OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Mr. Robert S. Wattles
ADD/S
7D-24 Hqs.

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1 APR 1971

MEMORANDUM FOR: Mr. William H. Rehnquist
Chairman, Security Review Committee

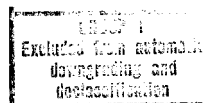
SUBJECT : Procedures for Declassification and
Release of Official Documents

1. This memorandum is submitted pursuant to the agreement reached at the first meeting of the Committee on 2 March and is in response also to your memorandum of that date to Committee members. Our comments below are keyed to the various items specified in NSSM 113 of 15 January, which called into being the Committee and to the three considerations set forth in your 2 March memorandum.

2. There are several programs and legal authorities, additional to E. O. 10501, which we believe the Committee would want to take into account in considering any revisions of the Executive Order called for by NSSM 113.

a. By memorandum of 21 December 1970, the President stated his increasing concern about the disclosure in public media of classified information bearing upon important aspects of national security, "particularly that which tends to jeopardize intelligence sources and methods." He noted that statutory responsibility for the protection of such sources and methods is conferred on the Director of Central Intelligence and called on the Director to provide guidance to departments and agencies in tightening procedures to protect such information and directed department and agency heads to fully cooperate. The President's memorandum has been implemented by two memoranda of

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8 March 1971 from Mr. Helms. It is our view that E. O. 10501 should include a reference to the term "intelligence sources and methods" even though the definitions of Top Secret, Secret and Confidential, as set forth in E. O. 10501 could be considered broad enough to cover it. In paragraph 4 we recommend certain additions to the Executive Order to accomplish this.

b. Executive Order 10501 and Dr. Kissinger's specific questions concerning penalties and legal measures highlight one of the major deficiencies in the control of classified information; namely, the limited area in which prosecutions can be accomplished. The major deficiency of course is that the espionage laws are limited to certain information and require that disclosure be for certain purposes, to certain persons and with certain intents. A revision to the Order of course cannot change this. It seems likely, however, that the power of the prosecution would be enhanced if the Executive Order made clear by preamble that it is intended to cover information contemplated by the espionage laws and other basic security laws. A third clause to the preamble is suggested with the present third clause becoming clause four:

WHEREAS the espionage laws of the United States (Sections 793, 794 and 798 of Title 18, 783(b) of Title 50); the Atomic Energy Act of 1946, as amended; the proviso to Section 102(d)(3) of the National Security Act of 1947, as amended; and Section 6 of the Central Intelligence Agency Act of 1949, as amended, establish certain authorities, responsibilities, restrictions and penalties concerning information involving national security;

c. It is also suggested that the Committee may want to recommend the study of legislation which would define information to be protected, provide penalties for its

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unauthorized disclosure and provide authority to enjoin its disclosure. See subparagraph 3. 1. below.

d. The Committee also may want to note the work now in process by the Department of Justice on the reform of the federal criminal laws.

3. As to the points raised by NSSM 113:

a. Under Central Intelligence Agency regulations which implement Section 7(b) of E.O. 10501, the dissemination of classified defense information outside the executive branch is strictly controlled as follows:

(i) No information may be released outside the Agency except as authorized by an appropriate official.

(ii) No employee may testify before a committee of Congress except upon authorization of the Director.

(iii) Any employee served with a subpoena, which might require the disclosure of classified data, by a court or a Congressional committee, must report the matter, with full particulars, to the General Counsel whose advice and recommendations as to whether, and under what circumstances, the employee may comply is submitted to the Director for his decision.

(iv) The furnishing of CIA intelligence information in response to a Congressional request must be approved by the Deputy Director for Intelligence with the concurrence of the official responsible for the information. Failing such concurrence, the matter is referred to the Director for decision.

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(v) The third-agency rule (Section 7(c) of E. O. 10501) is followed with respect to dissemination outside the executive branch of information originating in another department or agency.

(vi) The release of any information to the public information media requires the approval of the Assistant to the Director, whose duties are to serve as the focal point for relations with the press. He does not release any classified information, however.

(vii) Requests for the release of information under the Freedom of Information Act must be approved or disapproved by the Assistant to the Director.

(viii) In order to prevent inadvertent disclosure of classified information, employees must receive advance approval by an appropriate official for any speech or publication which involves information which might be classified.

(ix) The criteria for release of intelligence data to contractors or their employees are set forth in USIB-D-39, 5/19 dated 28 September 1967.

b. In accordance with Sections 4 and 18 of E. O. 10501, Agency regulations have been issued under which officials have been appointed to review documents on a continuing basis for the purpose of declassifying or downgrading whenever national security and defense considerations permit.

c. On 5 May 1962 and 5 October 1963, the Chairman, Interdepartmental Committee on Internal Security was advised by the Deputy Director of Central Intelligence that all classified documents and material originating in CIA are considered of an intelligence nature and therefore will be marked Group 1, in order to protect intelligence sources and methods. As indicated in b. above, our regulations call for a continuing

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review of classified documents for the purpose of downgrading or declassification. As a practical matter, the continuous review concept has been difficult to implement because of the manpower which would be involved in processing our large output of classified material.

d. It is the practice of the Central Intelligence Agency not to release any National Security Council papers outside the Agency. Requests originating outside the Agency for NSC papers are referred to the NSC Secretariat. Within the Agency, such papers are closely controlled. Distribution is limited to its employees whose duties make necessary their access to particular NSC papers. The routing of NSC papers within the Agency is centrally logged and a record is kept of the location of the documents.

e. As to desired changes in Section 7(b) of E. O. 10501 concerning dissemination outside the executive branch, it is believed the Order is satisfactory in its present form, insofar as dissemination to either of the other two branches of Government is concerned. It appears to be too restrictive with respect to dissemination to persons outside the Government altogether. Section 7 provides that knowledge or possession of classified defense information "shall be permitted only to persons whose official duties require such access in the interest of promoting national defense and only if they have been determined to be trustworthy." In this context the term "official" appears to mean "Government," that is, duties deriving from Government employment or a contractual relationship with the Government. There are, of course, instances in which classified defense information should be revealed, in the interest of promoting the national defense, to persons who do not have such duties. For example, it is sometimes necessary to permit former Agency employees and their counsel to have access to classified defense information and to reveal it to other persons who do not have Government duties. It is suggested, therefore, that Section 15 provide that "knowledge or possession of classified information be

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permitted only to individuals who could assist in promoting the national defense and only if they have been determined to be trustworthy." This would be in addition to the criteria set forth governing the release of classified information to historians. Section 15 would continue to require the head of the agency or department to take steps to assure that classified information is not published or otherwise compromised.

f. With respect to measures needed to assure compliance with Sections 4 and 18, it is suggested that the Committee consider establishing a requirement whereby the head of a department or agency must not only appoint a person or persons to be responsible for continuing review of the implementation of the Order and responsible for a continuing review of classified information for the purpose of declassifying or downgrading, but also designate a senior individual to be responsible for supervising the downgrading or declassification program.

g. As indicated in paragraph c. above, all CIA classified material is placed in Group 1. This Agency, therefore, has no comment with respect to guidelines covering material in Groups 2, 3, and 4.

h. We perceive no realistic guidelines or formula to be added to the Executive Order for declassifying Group 1 material. The definitions of Top Secret, Secret and Confidential information involve the exercise of judgment by the classifying official and the removal of any classification necessarily also requires a decision that the information no longer falls within the indicated classification. The current guideline that assigned classifications are to be reviewed is, we believe, the appropriate approach to be taken. Generally, declassification of CIA documents requires a document by document or program by program review to ensure that intelligence sources and methods would not be compromised. As to any changes in the legislation involving

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information now classified under the Atomic Energy Act, this Agency would want the current authority to communicate Restricted Data provided by Section 144(d) of that Act (42 USCA 2164(d)) be retained.

i. As to criteria for the release of past, present and future National Security Council papers, several approaches would seem possible. On the one hand, a paper or a portion of it could be declassified and it would seem desirable that these decisions be made with the participation of each department and agency represented on the Council. For this purpose, a permanent National Security Council review group would be appropriate, in which case CIA should be represented. Additionally, a decision could be made to release a National Security Council paper notwithstanding its continued classification, but an appropriate amendment to the Executive Order would be necessary if the decision to release is to be made by anyone other than the President. (We have not attempted to ascertain the wishes of former Presidents Truman and Johnson. We assume this would be done by the Chairman of the Committee or by Dr. Kissinger's office.)

j. No change is needed concerning public access to classified defense information from the point of view of this Agency. We would not object, however, to an amendment to Section 15 as suggested in subparagraph e. above as it pertains to access to classified information by persons outside the executive branch.

k. Certain administrative action with respect to the release or disclosure of classified information made in a manner not authorized by the Executive Order is available currently. Any such release or disclosure could be investigated and defensive procedures could be tightened. The culprit, if identified, could be punished, in some instances perhaps by termination of employment. (See in this connection the President's statement in his 21 December memorandum that "I wish responsible officials to take firm disciplinary action against individuals under their jurisdiction found

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responsible for careless or deliberate mishandling of classified information.") Also, prosecution would be in order, if a criminal statute is involved. Both types of action are called for by E. O. 10501 in its present form.

1. No changes in the Executive Order concerning effective controls and penalties are suggested. The Security Review Committee might like to consider recommending a study of legislation to strengthen the Order. A criminal statute defining the information to be protected and prohibiting unauthorized release or exposure could be considered. The legislation might include traditional penalties and Hiss Act penalties (forfeiture of retirement benefits (5 USCA 8311, et seq.)). Injunctive relief, which might be even more useful since prevention of exposure in many instances is more to the point than are penalties and might offer greater deterrence, could be included in the legislation.

4. As stated in paragraph 2. a., the President, in his memorandum, dated 21 December 1970, expressed his concern about the disclosure, in public media, of classified information, "particularly that which tends to jeopardize intelligence sources and methods." This, of course, is a statutory responsibility of the Director of Central Intelligence. Pursuant to his responsibility, the Director has issued directives to the intelligence community setting forth procedures to be followed to ensure protection of intelligence sources and methods. It is our view that his statutory responsibility would be strengthened, if E. O. 10501 contained some guidance covering this matter. Accordingly, we recommend the following addition to E. O. 10501:

(a) Section 5. Marking of Classified Material

(k) Sensitive Intelligence. A warning notice which reads as follows: "WARNING NOTICE - SENSITIVE SOURCES AND METHODS INVOLVED" shall be employed to inform all

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recipients that the information is sensitive and requires special controls and a severely limited distribution. For the purpose of this marking, such sensitive intelligence is identified as that classified intelligence, the unauthorized disclosure of which could lead to counteraction either (a) jeopardizing the continued productivity of intelligence sources and methods which provide intelligence vital to the national security or (b) offsetting the value of intelligence vital to the national security.

(b) Section 7. Accountability and Dissemination

(d) Information contained in intelligence documents bearing the following caveat: "WARNING NOTICE - SENSITIVE SOURCES AND METHODS INVOLVED" may not be disseminated outside of authorized channels or released publicly in any manner without the permission of the originating agency and an assessment by the appropriate Chief of Intelligence as to the risks to the intelligence sources and methods involved.

5. In line with the intent of the considerations, set forth in your memorandum, dated 2 March 1971, to avoid the classification of material which is presently classified, it is our view that, from the standpoint of the Central Intelligence Agency, we would not object to a more stringent definition of "CONFIDENTIAL." We realize that this may create problems for other agencies and we, therefore, defer to them in this matter.



CIA Representative

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cc: Mr. Howard C. Brown, Jr.
Assistant General Manager
Atomic Energy Commission

Mr. Joseph J. Liebling
Deputy Assistant Secretary of Defense-
Security Policy

Mr. William D. Blair, Jr.
Deputy Assistant Secretary
for Public Affairs
Department of State

Mr. Thomas K. Latimer
National Security Council

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SUBJECT: Procedures for Declassification and Release of Official Documents

CONCURRENCES:

S I G N E D

23 MAR 1971

Lawrence R. Houston
General Counsel

Date

S I G N E D

22 MAR 1971

Thomas A. Parrott
Assistant Deputy to the DCI for
National Intelligence Programs Evaluation

Date

S I G N E D *E. M. Proctor*

26 MAR 1971

for **R. Jack Smith**
Deputy Director
for Intelligence

Date

S I G N E D *Robert S. Mattles*

30 MAR 1971

for **John W. Coffey**
Deputy Director
for Support

Date

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Distribution:

Orig & 1 - Adse [Department of Justice]

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1 - DD/I w/basic*

2 - DD/S w/basic* *Early*

***Basic:**

- 1. Memo from William H. Rehnquist, Department of Justice,
dated 2 March 1971**
- 2. NSSM 113, dated 15 January 1971, from Henry A. Kissinger**

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TAB

Department of Justice
Washington, D.C. 20530

March 2, 1971

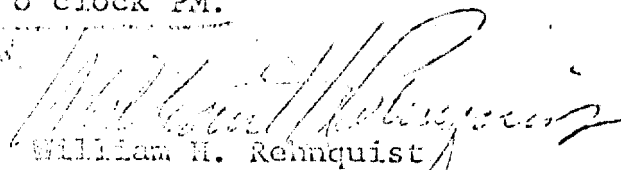
MEMORANDUM TO THE MEMBERS OF THE SECURITY REVIEW COMMITTEE

The Committee to Review Security Procedures held its first meeting on Tuesday, March 2. At this meeting it was decided that each of the agencies represented on the Committee would attempt, by April 2, 1971, to prepare and have circulated to other members of the Committee their responses to the inquiries stated in NSSM 113, of January 15, 1971. Responses to these inquiries should be made in the light of the following three considerations which have led to the establishment of the Committee:

- (a) Is it possible under existing procedures to either avoid the classification of a great deal of material which is presently classified, or to facilitate the declassification of classified material on a more rapid schedule than is presently done?
- (b) If unnecessary classification is avoided to the extent reasonably possible, and declassification accomplished with reasonable speed, can existing administrative, civil, and criminal sanctions against violation of disclosure restrictions on classified material be made more effective?
- (c) What should be the criteria for determining the release and time of release of NSC papers?

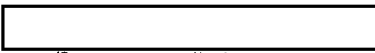
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Circulation of this material to other members of the Committee is hoped for by Friday, April 2, and a second meeting of the Committee will be held in my office on Thursday, April 8, at 2:00 o'clock PM.


William H. Rehnquist
Assistant Attorney General
Office of Legal Counsel

cc: Mr. Howard C. Brown, Jr.
Assistant General Manager
Atomic Energy Commission

Mr. Joseph J. Liebling
Deputy Assistant Secretary of Defense-
Security Policy


Deputy Director of Security
Central Intelligence Agency

Mr. William D. Blair, Jr.
Deputy Assistant Secretary
for Public Affairs
Department of State

Mr. Thomas K. Latimer
National Security Council

STATINTL

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

DDI-119-71

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January 15, 1971

Executive Registry
71-330

National Security Study Memorandum 113

TO: The Secretary of State
The Secretary of Defense
The Attorney General
The Director of Central Intelligence
The Chairman of the Atomic Energy Commission

SUBJECT: Procedures for Declassification and Release of
Official Documents

The President has directed that a review be made of current security classification procedures set forth in Executive Order 10501, as amended. The study should include an examination of:

- present actions being taken and procedures being followed by the heads of departments and agencies pursuant to Sec. 7 (b) of E. O. 10501, as amended;
- present implementation by the various departments and agencies of Sec. 18 of E.O. 10501, as amended, and of that portion of Sec. 4 which directs department and agency heads to designate persons to be responsible for continuing review of classified material for the purpose of declassifying it;
- whether or not the material currently placed in Group 1 as defined in Sec. 4 of E.O. 10501, as amended, is being reviewed on a regular basis for declassification; and
- existing criteria and guidelines for release of National Security Council papers produced both by previous Administrations and by the present Administration.

Based upon the foregoing reviews, the study should recommend:

- changes in Sec. 7 (b) of E.O. 10501, as amended, to provide specific criteria under which the heads of departments and agencies can disseminate classified material outside the Executive Branch;

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- measures, if needed, to assure compliance with Sec. 4 and Sec. 18 of E.O. 10501, as amended;
- changes in E.O. 10501, as amended, to provide more specific guidelines as to what material should be placed in Groups 2, 3 and 4, respectively, as defined in Sec. 4;
- guidelines under which, if possible, material now placed in Group 1 could be declassified, with particular attention to the question of whether legislation would be required if it is deemed practical to release any information now classified under the Atomic Energy Act;
- criteria for the release of National Security Council papers from previous Administrations. (The wishes of former Presidents Truman and Johnson regarding NSC papers produced during their Administrations should be ascertained.);
- guidelines for the future release of NSC papers produced during this and future Administrations, including a recommendation for or against the establishment of a permanent NSC review group to determine whether or not the release of any particular NSC document would be injurious to the national security;
- types of classified information to which public access should be granted, conditions under which, and specific groups to whom, such access should be granted, and criteria and procedures for granting such access;
- specific steps which can be taken, both administrative and legal, in cases of release or disclosure of classified information or material except in the manner authorized in E.O. 10501, as amended; and
- changes which ought to be made in that Executive Order to strengthen both the controls over and penalties for the release of classified material except in the manner authorized in E.O. 10501, as amended.

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This study will be prepared by an Ad Hoc Group comprising representatives of the addressees and chaired by the representative of The Attorney General. A representative of the National Security Council staff will be included on the group.


Henry A. Kissinger

cc: Chairman, Joint Chiefs of Staff
Director, Office of Management and Budget
Director, Office of Science and Technology
Chairman, President's Foreign Intelligence
Advisory Board

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